

**PT 00-28**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**BOBBY E. WRIGHT  
HOUSING COMPLEX, INC,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No. 00-PT-0057  
(95-16-1170)**

**Real Estate Tax Exemption  
For 1995 Assessment Year**

**P.I.N.S: 16-11-412-054  
16-11-412-055  
16-11-412-056  
16-11-412-057  
16-11-412-058  
16-11-412-061  
16-11-412-062**

**Cook County Parcels**

**Alan I. Marcus  
Administrative Law Judge**

**RECOMMENDATION FOR DISPOSITION ON REMAND**

This matter comes to be considered pursuant to the terms of an Order issued by Judge Joanne L. Lanigan on January 20, 2000. Judge Lanigan issued her order in connection with that Administrative Review matter entitled Bobby E. Wright Housing Complex, Inc. v. Department of Revenue, Circuit Court of Cook County Docket No. 99 L 50109.

In substance, Judge Lanigan's Order directed that this matter be remanded to the Illinois Department Of Revenue (hereinafter the "Department") for purposes of allowing the applicant herein, Bobby E. Wright Housing Complex, Inc,

(hereinafter "BEW" or the "applicant") the opportunity to present additional evidence. The underlying controversy arises as follows:

BEW filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") on March 21, 1996. Said complaint sought to exempt real estate identified by Cook County Parcel Index Numbers 16-11-412-054, 16-11-412-055, 16-11-412-056, 16-11-412-057, 16-11-412-058, 16-11-412-061 and 16-11-412-062 (hereinafter collectively referred to as the "subject property") from 1995 real estate taxes under Sections 15-65(a) and/or 15-65(c) Property Tax Code, 35 **ILCS** 200\1-1 *et seq.*<sup>1</sup>

The Board reviewed BEW's complaint and recommended to the Department that the requested exemption be denied. The Department accepted

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1. Sections 15-65(a) and 15-65(c) state as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

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(c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.

35 **ILCS** 200/15-65(a), (c).

this recommendation via a determination dated March 27, 1997. Said determination found that the subject property was neither in exempt ownership nor in exempt use. BEW thereafter filed a timely request for hearing as to this denial and subsequently presented evidence at a formal evidentiary hearing. After carefully review the evidence adduced at that hearing, I issued a Recommendation for Disposition recommending that the Department's initial exemption denial be affirmed. The Director of Revenue accepted this Recommendation via Notice of Decision dated December 28, 1998.

BEW subsequently filed the aforementioned Administrative Review action, from which Judge Lanigan issued her remand Order. Pursuant to that Order, BEW and the Department filed a stipulation and supporting evidence on August 29, 2000. Following careful review of that stipulation, and the evidence offered in support thereof, I recommend that the subject property be exempt from 1995 real estate taxes under Section 15-65(c) of the Property Tax Code.

**SUPPLEMENTAL FINDINGS OF FACT:<sup>2</sup>**

1. BEW and the Department have stipulated that:

- A. BEW, an Illinois not for profit corporation, was granted an exemption from federal income tax, under Section 501(c)(3) of the Internal

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2. These Findings are supplemental in the sense that they augment the Findings contained in the Recommendation for Disposition issued on December 28, 1998. In the interest of administrative economy, the Findings contained in that Recommendation are, to the extent relevant herein, incorporated by reference into this Recommendation for Disposition on Remand.

Revenue Code, on October 7, 1985;

- B. BEW retained that tax exempt status throughout the 1995 assessment year;
- C. BEW made application to the United States Department of Housing and Urban Development (hereinafter “HUD”) for funds to construct and operate a housing facility for very low income persons with disabilities in January of 1987;
- D. BEW made this application for funds pursuant to Section 202 of the National Housing Act of 1959, 12 U.S.C.A. § 1701, *et seq*;
- E. HUD approved BEW’s application on September 27, 1987;
- F. BEW obtained ownership of the subject property via a quitclaim deed dated June 1, 1992 and owned said property throughout the 1995 tax year;
- G. In furtherance of its Section 202 application, BEW began constructing a 40-unit residential facility (hereinafter the “facility”) on the subject property shortly after it obtained ownership thereof. Its construction completion and occupancy schedules were as follows:

<b>EVENT</b>	<b>APPROXIMATE DATE ACCOMPLISHED</b>
Construction Completed	Late 1994
Occupancy Began	End of 1994
Most Units Filled	Latter part of 1995

- H. During 1995, all of the units were occupied by very low income persons with disabilities whose incomes consisted almost entirely of government

subsidies, such as General Assistance or Social Security Disability Income;

- I. These persons did pay rent to BEW. However, the amount of rent they paid was nominal vis-à-vis market rent and did not cover most the expenses BEW incurred while operating the facility;
- J. HUD provided BEW with funds to cover any deficits attributable to the difference between rental income receipts and actual operating expenses.

Stipulation, pp. 1-4.

2. I take Administrative Notice of the following legal considerations, which BEW and the Department have attached to their stipulation:

A. The income level for a “very low income” person can not exceed “50% of median income.” Administrative Notice of OMB 2502-0204 and accompanying Directive 4350.3, implementing 24 CFR 813, 24 CFR 215, 24 CFR 236, 24 CFR 885 and 24 CFR 889 and 890.<sup>3</sup>

B. A person is considered disabled, under 42 U.S.C.A § 8013(k)(2) if they are determined, pursuant to regulations promulgated by the Secretary of HUD, “to have a physical, mental, or emotional impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his or her ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions.” Administrative Notice of 42 U.S.C.A § 8013(k)(2).

C. 42 U.S.C.A § 8013(k)(2) states, *inter alia*, that:

A very low income person shall pay as rent for a dwelling unit [of the type located within the subject property] the higher of the following amounts, rounded to the nearest dollar: (A) 30 percent of the person’s adjusted monthly income,<sup>4</sup> (B) 10 percent of the person’s monthly income, or (C) if the person is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the person actual housing costs, is specifically designated by such agency to meet the person’s housing costs, the portion of such payments which is so designated ...[.]

Administrative Notice of 42 U.S.C.A. § 8013(d)(3).

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3. These regulations do not define how “median income” is to be measured.

4. HUD and BEW adjust the resident’s income to account for things such as dependent’s allowance, allowance for handicapped assistance and medical expenses. Stipulation, p. 3 and HUD-mandated Compliance Forms attached thereto.

- D. BEW and HUD were prohibited from evicting any resident for failure to pay rent. Administrative Notice of OMB 2502-0204 and accompanying Directive 4350.3, implementing 24 CFR 813, 24 CFR 215, 24 CFR 236, 24 CFR 885 and 24 CFR 889 and 890.
- E. 42 U.S.C.A § 8013(i)(1) provides, *inter alia*, that “an owner [such as BEW] shall adopt written tenant selection procedures that are satisfactory to the Secretary [of HUD] as (A) consistent with the purpose of improving housing opportunities for very low income persons with disabilities; and (B) reasonably related to program eligibility and [the program] applicant’s ability to perform the obligation of the lease.” 42 U.S.C.A § 8013(i)(1).

### **CONCLUSIONS OF LAW:**

After carefully reviewing the Stipulation and initial Recommendation for Disposition herein, I make the following conclusions of law: First, both the initial Recommendation and the Departmental determination it affirmed were based on the assumption that the subject property was used to produce income for its owner, and therefore, “leased or otherwise used with a view to profit,” in violation of the first paragraph of Section 15-65 of the Property Tax Code.<sup>5</sup> *See*, 35 ILCS 200/15-65; People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924). As such, the subject property was not in exempt use because applicant’s use thereof seemed to be that of a commercial landlord.

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5. The first paragraph of that provision states that, “all property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit ...[.]” 35 ILCS 200/15-65.

This conclusion seemed justified from the record adduced at hearing because applicant did not submit any evidence describing critical elements of its *modus operandi*. For instance, the record failed to indicate that: (1) all residents of the facility were disabled persons with very low incomes; (2) such persons paid nominal, and in some cases, no rent; (3) applicant was legally prohibited from evicting any resident for failure to make rental payments; (4) applicant in fact made no pecuniary profit from any rental income it received because the amount of such income did not cover its operating expenses; and, (5) HUD directly and fully subsidized all operating losses that applicant sustained.

These factors are important because of their bearing on the statutory exempt use requirement. Such use must be one that, by definition, benefits an indefinite number of people and persuades them to an educational or religious conviction that benefits their general welfare or somehow reduces the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). It must also be one undertaken by an applicant that: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).



The Korzen factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2<sup>nd</sup> Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own members (*see*, Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3<sup>rd</sup> Dist. 1987)) or, (2) operates in the public interest and lessens the State's burden. (*see*, DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations), *supra*.

It cannot be disputed that applicant lessens a governmental burden by providing housing to disabled individuals with very low incomes. Indeed, the General Assembly specifically recognizes that supplying such housing is in the public interest by providing for exemption of facilities, such as the subject property, that are “qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended.” 35 ILCS 200/15-65(c).

That provision, like all other statutes exempting real estate from taxation, must be strictly construed. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Thus, one must exercise great caution in applying it, so as to ensure that only the very limited class of properties described therein actually receive the exempt status which the

Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the Section 15-65(c) exemption will cause damage to public treasuries and the overall tax base.

In order to prevent this, the General Assembly imposed the following pertinent statutory requirements: first, the property must be owned by an entity that qualifies for exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code; second, the property must be improved with facilities that are “qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq.*] as amended[;]” and third, the property must be “actually and exclusively used for charitable or beneficent purposes.” 35 **ILCS** 200/15-65, 15-65(c).

The record adduced at hearing demonstrates that applicant was granted the necessary exempt status in October of 1985 and maintained that status throughout the tax year in question. Applicant Ex. No. 3; Tr. pp. 20-21. It further establishes that the subject property was improved with a facility of the type specified in Section 15-65(c). Tr. p. 36. What the record lacked, however, was specific evidence demonstrating how applicant’s use of that facility qualified as being “charitable” within the meaning of Illinois law.

The Stipulation that applicant and the Department submitted on Remand cures this evidentiary deficiency, for it proves that applicant relieves a governmental burden by using the facility for no purpose other than providing housing to a disadvantaged population, that being disabled persons with very low incomes. It also establishes that applicant’s use of the subject property can be

differentiated from that of a non-exempt commercial landlord because: (1) applicant provides housing to disabled persons even if they do not have the ability to pay rent; (2) those rents applicant does charge are nominal and based on a resident's ability to pay rather than market rates; (3) applicant does not profit from any rental income that it receives, because its rental receipts are far less than its operating expenses; and, (4) applicant does not evict any resident for failure to pay rent.

Based on the foregoing, I conclude that the subject property qualifies for exemption from 1995 under Section 15-65 (c) of the Property Tax Code, 35 **ILCS** 200\1-1 *et seq.* Therefore, the Department's initial determination in this matter, which denied such exemption, should be reversed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that real estate identified by Cook County Parcel Index Numbers 16-11-412-054, 16-11-412-055, 16-11-412-056, 16-11-412-057, 16-11-412-058, 16-11-412-061 and 16-11-412-062 be exempt from 1995 real estate taxes under Section 15-65(c) of the Property Tax Code, 35 **ILCS** 200\1-1 *et seq.*

Respectfully Submitted,

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Alan I. Marcus  
Administrative Law Judge

September 7, 2000  
Date